IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3421 OF 2003

The State of Maharashtra,
through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-400 032. ...Petitioner.

Vs.

1. Shri K.B. Nimbalkar,
   Retired Jailor, Grade-II,
   residing at Seema Apartment,
   Paud Road, Kothrud, Pune-411 029.
2. Accountant General,
   Government of Maharashtra,
   Maharashi karve Road, Mumbai. ...Respondents.

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Mrs. M.P. Thakur, AGP for the Petitioner.
Mrs.Vaidehi Kamat i/b. Mr. M.D. Lonkar for Respondent No.1.

.....

CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

February 3, 2006.

ORAL JUDGMENT (Per Dr.D. Y. Chandrachud, J.):

I

The First Respondent was working as a Jailor in Grade II and during the relevant time, between 10th July 1985 and 17th August 1985, he was assigned for duty at the District Prison, Byculla, Mumbai. At the time when the First Respondent was posted as Jailor, an undertrial prisoner by the name of Abdul Hamid was lodged in the prison. It was alleged that during this

period, there was a failure on the part of the First Respondent to discharge his duties and that the aforesaid undertrial prisoner had brought in unauthorised articles including a Television Set, Video Recorder and Video Cassettes. There was, it was alleged, a failure on the part of the First Respondent to take necessary steps which he was under an obligation to take in his capacity as a Jailor. A disciplinary enquiry came to be convened against the First Respondent and on 3rd February 1986, a chargesheet was issued to him. On the conclusion of those proceedings, the First Respondent came to be removed from service by an order dated 12th February 1988. The order was challenged by the Petitioner and the Administrative Tribunal while setting aside the order of punishment, granted liberty to the State Government to commence a *de novo* enquiry. An enquiry was accordingly held. During the pendency of the enquiry, the First Respondent attained the age of superannuation on 31st March 1999. The enquiry continued under the applicable Rules after the aforesaid date and the Enquiry Officer submitted his report on 20th October 1999. A notice to show cause was issued to the First Respondent calling upon him to explain as to why the findings contained in the report should not be accepted. The First Respondent submitted his reply and on 4th

May 2000, the disciplinary authority while holding that the charge of misconduct had been duly established imposed a punishment of a ten percent reduction in the pensionary payments of the First Respondent on a permanent basis. The First Respondent challenged that order before the Maharashtra Administrative Tribunal, which allowed the application by its order dated 11th September 2000. The State of Maharashtra has instituted these proceedings to challenge the order of the Tribunal.

II

2. In the course of the disciplinary enquiry, the Enquiry Officer came to the conclusion that Charges 5, 7 and 8 that were levelled against the First Respondent had been partially established in the enquiry. These charges were as follows:

> "(i) Charge No.5 : On 12th August 1985, an under trial prisoner, Abdul Hamid, had between 5.30 and 6.15 p.m. brought into the premises of the Byculla Prison, unauthorised articles such as a Television set, Video Recorder and Video Cassettes through the main gate into barrack No.2 without permission. Information of this occurrence was furnished to the First Respondent, but the First Respondent did not take a surprise check of the barrack, nor did he give directions of seizure of these unauthorised articles. The First Respondent did not take steps to verify as to whether the aforesaid articles had been duly seized and removed as a result of which they continued to remain under the custody of the

under trial prisoner in the barrack. The conduct of the First Respondent thus involved a breach of discipline, negligence and a responsibility in the discharge of his duty, thereby leading to a breach of Rule 14(l) of the Maharashtra Prison (Staff Function) Rules, 1955;

-(ii) Charge No.7 : Between 10th July 1985 and 17th August 1985, the First Respondent did not conduct surprise checks of the prisoners entering or leaving the barrack cells though the prisoners were moving and communicating freely, nor did the First Respondent issue directions for conducting such checks. There was, thus, a breach of discipline, negligence and irresponsible conduct on the part of the First Respondent in violation of the Maharashtra Prison (Staff Function) Rules, 1955;

-(iii) Charge No.8 : Between 10th July 1985 and 17th August 1985, the First Respondent as a Senior Jailor of the Byculla Prison had not carried out every day surprise checks of the barracks and the Cells and his conduct demonstrated a lack of discipline, negligence and irresponsibility.

3. The Enquiry Officer came to the conclusion that all these three articles of charge were partially established. The Enquiry Officer took due note of the defence of the First Respondent that he had informed Shri Deshpande, the Superintendent of Jail. Consequently, the Enquiry Officer held that it would not be appropriate to hold the First Respondent as

entirely or exclusively guilty. However, the Enquiry Report found that the fact remained that even if on 12th August 1985 the First Respondent had been unable to seize the unauthorised goods, even so the First Respondent did not take any steps thereafter to do so. The First Respondent did not file a report of this occurrence in the Jail Report Book. On 17th August 1985, the undertrial prisoner in question, had stored unauthorised goods in a large number within the barracks for which the responsibility must attach to a number of employees from the Constables to the Superintendent. These officials had not carried out their duties to conduct surprise checks. The First Respondent who was working as a Senior Jailor was on his part responsible. In the circumstances, the charges levelled against the First Respondent were held to have been partially established.

III

4. During the course of these proceedings, it has emerged that besides the First Respondent, disciplinary proceedings were held by the State Government, against C.S. Deshpande, the then Superintendent, J.P. Lobo, who was also serving as Jailor, Grade-II, C.S. Sonawane, Jailor, Grade-II, S.R. Sawant, and V.B. Salve who were serving as Naiks and V.M. Nalawade, P. D. Gaikwad

and N.D. Bangar who were Jail Guards. The Government has, therefore, proceeded not only against the First Respondent but also against other officials in the hierarchy against whom several allegations of indiscipline, negligence and lack of responsibility in the discharge of their duties as prison officials were levelled.

5. The Tribunal allowed the application filed by the First Respondent on the ground that the Enquiry Officer held that the finding of misconduct was partially established despite finding that the First Respondent had reported the occurrence to the Jail Superintendent. The Tribunal held that once the First Respondent had reported the incident to a superior, there was no Rule which compelled him to send a further report to a superior of his superior and that consequently, the First Respondent was not guilty of misconduct. The Tribunal was of the view that the Enquiry Officer could have held the First Respondent guilty of misconduct provided it was possible to hold that the articles had come into the Cell at a particular time on a particular date on which the First Respondent was to perform his duties there. The Tribunal, after reappreciating the evidence, came to the conclusion that the findings were perverse and were based on surmise and conjecture.

As noted earlier, the First Respondent attained the age of superannuation during the pendency of the disciplinary proceedings. The Tribunal held that under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, it was open to the Government to withhold or withdraw the pension or a part thereof if in departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. The Tribunal held, relying upon the judgment of the Supreme Court in **D.V. Kapoor vs. Union of India**, AIR 1990 SC 1923 that the enquiry had not resulted in a finding that the First Respondent was guilty of grave misconduct or negligence. The Tribunal held that the First Respondent was guilty of "some technical negligence and not of grave negligence". The order of punishment was quashed and set aside, with a direction to restore the payments which had been withheld together with interest at the rate of 18% per annum if payment is not effected within a period of four months of the order of the Tribunal.

IV

6. The AGP who appeared on behalf of the Petitioner has submitted that (i) The Tribunal was not justified in reappreciating the evidence and substituting its own findings for the findings of the

Enquiry Officer; (ii) So long as the findings of the Enquiry Officer were based on some evidence, as they are in the present case, no case for interference by the Tribunal was made out; (iii) The judgment of the Supreme Court in **D.V. Kapoor's** case has been considered in subsequent decisions and the Supreme Court has laid down that a mere absence of the use of the words "grave misconduct or negligence" does not by itself invalidate the punishment imposed for a withdrawal of pension and while exercising judicial review, the Tribunal must have regard to the nature of the charge, the conduct of the delinquent employee and the finding of misconduct in determining as to whether the pensionary payment has been lawfully withheld on the ground of grave misconduct or negligence; and (iv) Rule 27 authorises the withdrawal of pension when there is grave misconduct or negligence and the Tribunal was in error in holding that the word "grave" must qualify "misconduct" as well as "negligence". On the other hand, on behalf of the First Respondent, Counsel relied extensively on the report of the Enquiry Officer and submitted that the finding in the present case would not show a grave dereliction of duties. Counsel submitted that the view of the Tribunal can be justified on the basis of the decision of the Supreme Court in **D.V.**

Kapoor's case.

V

7. The parameters which must define the limits of judicial review in disciplinary proceedings are settled. The function of judicial review is not to substitute a finding of fact which the Judge considers must appropriate for the finding which has been arrived at by the disciplinary authority. The primary fact finding role is assigned in service jurisprudence to the disciplinary authority and, where an Enquiry Officer is appointed as delegate of the disciplinary authority, the enquiring officer makes an initial determination. The reviewing Court has a limited jurisdiction which extends to determining as to whether the finding of misconduct is based on some evidence. Once the finding of misconduct is based on some legally acceptable evidence, it is no part of the function of the reviewing Court to reappreciate the evidence or to substitute the finding of fact which has been arrived at in the disciplinary enquiry with a view which appears to the reviewing Court to be more correct or equitable.

8. In **B.C. Chaturvedi vs. Union of India**, (1995) 6 SCC 749, a Bench of three Learned Judges of the Supreme Court

formulated the principles of law in the following terms :

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

The Supreme Court held that the disciplinary authority is the sole

judge of facts. The Court noted that these principles were well established in view of the decisions in **Union of India vs. H.C. Goel,** AIR 1964 SC 364; **State Bank of India vs. Samrendra Kishore Endow,** (1994) 2 SCC 537 and of the Constitution Bench in **State of Orissa v. Bidyabhushan Mahapatra,** AIR 1963 SC 779.

VI

9. Now if the decision of the Tribunal is assessed in the light of the law which has been laid down by the Supreme Court, it is impossible to sustain the findings or the approach of the Tribunal. The enquiring officer had taken into account all the relevant facts and circumstances in arriving at a conclusion that the charge of misconduct had been partly established as against the First Respondent. The First Respondent was found to have acted in breach of his duties and functions as a Senior Jailor attached to Byculla Prison in that, despite information being brought to his notice that an undertrial prisoner had brought in unauthorised articles such as a Television set, a Video Recorder and Video Cassettes into the premises of the barrack in which he was housed, the First Respondent had taken no steps either to seize the articles or to direct that seizure be effected. The First Respondent did not lodge a written report of the occurrence in the

Jailor's Report Book. Though it was his obligation to do so, the First Respondent had neither carried out surprise checks nor directed that such checks to be carried out. The Enquiring Officer had duly taken into account the circumstance that the First Respondent had informed the Superintendent of Jail. Whether that by itself absolved the First Respondent was for the disciplinary authority to determine. The Tribunal while interfering with the finding of misconduct held that under the rules, it was not shown to be the duty of the First Respondent to lodge a report with the superiors of his superiors and that the misconduct on the part of the First Respondent was a technical misconduct. In our view, the Tribunal has transgressed the limitations on its own jurisdiction by adopting this approach and in substituting its own finding for the finding of misconduct arrived at in the disciplinary proceedings. The findings in the disciplinary enquiry were based on some evidence. The finding of misconduct against the First Respondent was not that there was a failure on his part to make a report to a superior of his superior but that the First Respondent had failed to discharge his own duties and obligations as a Jailor. As a Jailor it was the duty of the First Respondent, once he was informed of the entry of unauthorised articles, to take steps for the seizure of those articles

and to ensure that surprise checks were carried out with a view to ensure that the articles were seized and the incident was not repeated. His failure to do so constituted a grave act of misconduct. There can be no gainsaying the fact that the maintenance of discipline in Jails is a matter of utmost importance and is an important facet of the security of the State. As a Jailor, the First Respondent was an important link in the maintenance of discipline in the Jail. A charge of misconduct involving a breach of duty particularly in the precincts of a Jail is a serious charge and a breach of discipline on the part of the Jail authorities must be dealt with sternly and strictly by the State. The Courts and Tribunals must be conscious of the serious consequences that are liable to ensue when public officials entrusted with duties at Jails are not held down strictly to the observance of their obligations. The consequence of the interference by the Tribunal in the present case is to seriously interfere with the enforcement of discipline in the environment of a Jail to the detriment of public interest. There was absolutely no warrant for the Tribunal to come to the conclusion that the report of the Enquiry Officer is based on conjecture or surmise or that there was only a technical breach of the service rules on the part of the First Respondent. The breach

was serious and it was duly found to have been established on the basis of the evidence on the record. The interference by the Tribunal with the finding of misconduct was not warranted.

10. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 empowers the Government to withhold or withdraw pension in certain situations. Rule 27 provides thus:

> "27. Right of Government to withhold or withdraw pension
>
> -(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:
>
> Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.
>
> -(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant

was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

-(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-
-(i) shall not be instituted save with the sanction of the Government,

-(ii) shall not be in respect of any event which took place more than four years before such institution, and

-(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

-(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

-(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

-(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss

> from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.
>
> -(6) For the purpose of this rule, -
>
> -(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
>
> -(b) judicial proceedings shall be deemed to be instituted -
> -(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance is made, and
>
> -(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court."

The power to order withholding or withdrawal of pension or a part thereof, permanently or for a specified period is conditioned by the requirement that the pensioner is "found guilty of grave misconduct or negligence". The first decision of the Supreme Court to which it would be necessary to advert, is the decision in **D.V. Kapoor vs. Union of India**, AIR 1990 SC 1923. That was a case where the Appellant was working as an Assistant in the Indian High Commission at London. Disciplinary proceedings were initiated against him on the ground that upon his transfer to New Delhi, he

had not joined duties. The main defence was that the employee's wife was ailing and that he had applied for leave since she was not in a position to undertake travel. The Enquiry Officer while investigating the charge of willful absence held that it was difficult to determine as to whether the absence from duty was entirely willful. Hence though the Enquiry Officer eventually came to the conclusion that the charge was established, he submitted that a sympathetic consideration was warranted. In this background, Supreme Court held that “myriad situations may arise depending on the ingenuity with which misconduct or irregularity was committed” and then observed thus:

> “It is not necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in the case are that the appellant was guilty of willful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the – Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it is not willful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.”

The Supreme Court noted that the power to withdraw pension was

subject to the condition that there should be a finding of grave misconduct or negligence in the discharge of duties and in the absence of such a finding, the imposition of a penalty withholding pension was without the authority of law. The judgment in **D.V. Kapoor**'s case was revisited in a decision of two Learned Judges in **Union of India vs. B. Dev,** AIR 1998 SC 2709 which was again a case involving unauthorised absence from duty. In that case, an Assistant Director who was on deputation at the High Commission at London for three years failed to report back upon transfer. The Enquiry Officer held that the charge of misconduct was established and that the absence from duty between February 1979 and November 1981 involved grave misconduct. The Tribunal, however, held that “grave misconduct” as defined in Rule 8(5) of the CCS (Pension) Rules had not been committed. The Supreme Court distinguished **D.V. Kapoor**'s case holding that there were vital differences since (i) no legitimate reason had been found for the Respondent to absent himself or to refuse to join his duties at Delhi; (ii) The Enquiry Officer had come to the conclusion that the employee had willfully disobeyed Government orders and that he had furnished untenable excuses relating to his own and his wife's illness in order not to join duties; (iii) The conduct of

employee as pre-meditated since he had already purchased a house at London at the beginning of his tenure which showed that he had no intention of returning. The Supreme Court held that looking to the facts of the case, the charge of grave misconduct had been correctly held to be proved. The order of the Tribunal was set aside. Subsequently, in **State of Punjab v. Sukhwinder Singh,** 1999 SCC (L&S) 1234, the Supreme Court considered Rule 16.2 of the Punjab Police Rules under which a dismissal was liable to be awarded "for the gravest acts of misconduct" or as the cumulative effect of continued misconduct proving incorrigibility. The Supreme Court allowed an appeal against the order of the High Court which had held that the misconduct had not been willful. The Court noted that Members of the Police force have to attend duties which have been allocated to them and ought not to absent themselves and this was a matter of paramount public interest which must overweigh private considerations. In that context, the Supreme Court held thus:

> "That the order of dismissal did not use the "mantra" of "gravest act of misconduct" is not determinative. The substance of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct."

In **Regional Manager & Disciplinary Authority v. S.Mohammed Gaffar,** (2002) 7 SCC 168, the Supreme Court while considering the classification of misconduct as “gross misconduct” or as “minor misconduct” under the Sastry Award and Desai Award held thus:

> “The expression “gross misconduct” is not to be or could have been viewed or considered in the abstract or as it appeared or appealed to the perception of the Court, at any rate, so far as the case on hand is concerned.”

A “minor misconduct”, ruled the Supreme Court, is a routine lapse or a lapse which has no direct adverse financial implications or loss to the assets or pecuniary interests of the Bank.

11. These decisions of the Supreme Court establish that in determining as to whether a case for withdrawal of pension under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 has been established, it is the substance of the matter and the not form that needs emphasis. In a given case, as a matter of form, the employer may well use the expression “grave misconduct” or “negligence”. However, a mere use of those words cannot on the one hand be dispositive of the question as to whether the

misconduct is grave or, as the case may be, whether a charge of negligence has been found to be established in accordance with law. On the other hand, where the nature of the charge, the conduct of the employee and the finding of misconduct demonstrate that the misconduct is of a grave nature and the charge of negligence has been established, it would be most inappropriate for the Court to interfere merely because the order does not contain a dogmatic recital of the mantra laid down in the rules. Courts do and must have regard to the substance of the misconduct which has been established.

12. In the present case, the charge of misconduct that is found to be established against the First Respondent is undoubtedly of a grave nature. A Jailor has been found to be in breach of his duties at a Jail. Unauthorised articles were brought into the Jail by an undertrial. Despite being informed, the First Respondent took no steps to seize the articles. No report was lodged in the Jailor's Report Book. No surprise checks were carried out. This is misconduct of a grave nature. The finding of negligence is also supported by the evidence on record. The finding of negligence on the part of the employee involved an

omission on his part to take such action which was required to be taken. There has been a finding that there was a negligence on the part of the First Respondent to discharge his duties in accordance with the functions of his office. In these circumstances, it cannot be disputed that the case was duly established for the withdrawal of pension under Rule 27.

13. We are conscious of the fact that the imposition of a penalty in the present case is a ten percent reduction in pension with permanent effect. We are affirmatively of the view that in view of the law laid down by the Supreme Court it does not lie within the province of this Court to exercise its jurisdiction under Article 226 of the Constitution to interfere with the order of penalty, where the penalty is not such as would shock the conscience of the Court. The Constitution Bench of the Supreme Court held in **Bidyabhushan Mahapatra** (supra) that once an order of the disciplinary authority can be supported on any finding of a substantial misconduct for which punishment can lawfully be imposed, it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. This principle was reiterated with the following

observations in para 18 of the decision in **B.C. Chaturvedi**'s case:

> "A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Having regard to the nature of misconduct, we are of the view that the punishment imposed is not such as would shock the conscience of the Court.

14. Before concluding we wish to record that since the Enquiry Officer had been of the view that besides the First Respondent several other officials were involved in the misconduct, we had called upon the State to file an additional affidavit stating what action has been taken against other erring

officials. An affidavit dated 1st February 2006 has accordingly been filed. The State Government had after disciplinary enquiry, taken action against the Superintendent Shri C.S. Deshpande, two other Jailors in Grade-II, namely, J.P. Lobo and C.S. Sonawane, against two officials holding the rank of Naik and against three Jail Guards. In so far as the Superintendent is concerned, the Court is informed that the disciplinary authority after an initial remand by the Tribunal and upon holding a fresh enquiry ordered a 50% reduction of pension. This decision was quashed by the Administrative Tribunal against which a Writ Petition was filed before this Court (Writ Petition 3158 of 2003). This Court by its interim order dated 12th June 2003 stayed the order of Tribunal. The Court has been informed that the Petition was dismissed for want of prosecution. We are of the view that an investigation must be made by the State Government of the circumstances in which the petition came to be dismissed for non-prosecution for want of payment of process charges and suitable action must be taken against the erring officials for want of due care in pursuing the earlier proceedings. In so far as the case of Shri J.P. Lobo, Jailor, Group-II is concerned, it has been stated that the Administrative Tribunal quashed and set aside the order of the disciplinary authority imposing a reduction

of pension to the extent of 100% with permanent effect and that this Court has granted Rule in Writ Petition 269 of 2000. The Petition is pending before this Court. Shri C.S. Sonawane, Jailor, Group-II is said to have expired after the order of the Maharashtra Administrative Tribunal. In his case, the Tribunal directed that all the facts be placed before the Governor before whom an administrative appeal has been filed. The Court has been informed that punishment has been imposed on two officials holding the post of Naik, Shri S. R. Sawant and Shri V.B. Salve and that punishments have been imposed upon the said three Jail Guards found to be involved in wrong doing.

15. The Learned AGP has also placed on the record a communication dated 25th January 2006 recording that the payments which have been found due to the First Respondent in accordance with law including under the General Insurance Scheme, Provident Fund, Commuted leave, provisional pension, leave travel, differential wages and death-cum-retirement gratuity have already been paid. If there are any other payments due and payable to the First Respondent in accordance with law, we direct that the same be paid over expeditiously.

16. In the circumstances and for the reasons which we have already indicated, we find that the order of the Maharashtra Administrative Tribunal, is unsustainable and that this Petition should accordingly be allowed. Rule is made absolute in terms of prayer clauses (b) and (c). In the facts and circumstances, there shall be no order as to costs.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)